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December 15, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

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Case Number: TSO-0401

This Decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as "the Individual") to obtain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."[1] A local Department of Energy Security Office (LSO) determined that derogatory information concerning the Individual's eligibility for an access authorization could not be resolved under the provisions of Part 710. For the reasons stated below, I find that the Individual's access authorization should not be granted.

I. BACKGROUND

The present proceeding involves an Individual who has been diagnosed with a serious mental illness. The Record shows that, since 1996, the Individual has suffered from two episodes of Major Depressive Disorder with Psychotic Features (MDDWPF). During these episodes, the individual's judgment and reliability have been severely impaired. If an Individual's judgment and reliability have been impaired, it is clear that allowing him access to classified information or special nuclear materials would endanger the common defense and security and would not be clearly consistent with the national interest as required by 10 C.F.R. § 710.27(d).

The Individual's disorder has, by all accounts, responded well to treatment and is currently in remission. By all accounts, the Individual is not currently experiencing any deficits in judgment or reliability. The Individual has now applied for a DOE access authorization. The LSO reviewing his application for access authorization correctly determined that the Individual's disorder raises a security concern under 10 C.F.R. § 710.8(h). Section 8(h) provides that a security concern is raised when an individual has:

> An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes *or may cause*, a significant defect in judgment or reliability.

[1] An "access authorization" is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5

10 C.F.R. § 710.8(h) (emphasis supplied).[2] In order to resolve the security concerns raised by the Individual's MDDWPF, the DOE arranged for the Individual to be examined by a DOE sponsored psychiatrist (the DOE Psychiatrist). The DOE Psychiatrist conducted an extensive review of the Individual's medical and personnel security records. The DOE Psychiatrist also conducted a forensic psychiatric examination of the Individual. After conducting his review of these records and his examination of the Individual, the DOE Psychiatrist concluded that the Individual met the criteria for Major Depressive Disorder, Recurrent, With Psychotic Features, set forth in the American Psychiatric Association's Diagnostic and Statistical Manual, Fourth Edition Text Revision (DSM-IV TR). DOE Exhibit 5 at 9; Tr. at 9. The DOE Psychiatrist further opined that this disorder causes, *or may cause*, a significant defect in judgment or reliability. As a result, the Individual's application for an access authorization was placed in administrative review and the present proceeding was commenced. On April 10, 2006, the DOE issued a letter notifying the Individual that the DOE possessed derogatory information that created a substantial doubt concerning his eligibility for access authorization (the Notification Letter). Specifically, the Notification Letter notes that the Individual "has an illness or mental condition of a nature which, in the opinion of a psychiatrist, causes, or may cause, a significant defect in his judgment or reliability." Notification Letter, Attachment at 1.

In response to the Notification Letter, the Individual filed a request for a hearing. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer. A hearing was held under 10 C.F.R. Part 710. At the Hearing, the DOE called one witness: the DOE Psychiatrist. The Individual called six witnesses: his wife, two psychiatrists, a licensed clinical psychologist, a close family friend and his supervisor. The Individual also testified on his own behalf. The record of this proceeding was closed on October 17, 2006, when OHA received a copy of the transcript of the Hearing.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). Part 710 generally provides

> [t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest.

10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the concern; the circumstances surrounding the concern, including knowledgeable participation; the frequency and recency of the concern; the

[2] As previously mentioned, the Individual's MDDWPF is in complete remission and he is currently free from any defects in judgment or reliability. The issue in the present case is raised by concern that the Individual might suffer a relapse of MDDWPF.

Individual's age and maturity at the time of the concern; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the concern, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). In the present case, the Record shows that a valid and significant question has been raised about the Individual's eligibility for an access authorization. The Individual has not convinced me that granting his security clearance would not endanger the common defense and security and would clearly be in the national interest.

III. FINDINGS OF LAW AND FACT

Three Psychiatrists and one Licensed Clinical Psychologist testified at the Hearing. Although, these mental health professionals disagree on some of the finer details, all four of the mental health professionals agree that the Individual suffers from a serious mental illness that has, in the past, resulted in the Individual experiencing a number of severe depressive and psychotic episodes. Each of these mental health professionals agrees that, while the Individual was experiencing these severe depressive and psychotic episodes, his judgment and reliability were severely impaired. All four mental Health professionals are in agreement that, at the time of the Hearing, the Individual was not experiencing any symptoms of his mental illness. Each of the four mental health professionals agreed that the Individual's judgment and reliability are currently unimpaired.

The Individual's mental disorder raises a serious and significant security concern under 10 C.F.R. § 710.8(h). Consequently, I find that the DOE security office properly invoked Criterion H in issuing the Notification letter.

Accordingly, my responsibility is to make an independent assessment of the seriousness of the risk under Criterion H. In that connection, I will consider those factors set forth at 10 C.F.R. § 710.7(c) in deciding whether granting an access authorization to the Individual would not endanger the common defense and security and would be clearly consistent with the national interest.

Every individual with a DOE access authorization presents a security risk. That risk includes the possibility that an individual will experience a mental illness. However, in some cases, an individual who has previously experienced a severe episode of mental illness presents a greater risk of experiencing a severe episode of mental illness in the future than a randomly chosen

member of the general population. In order to consider whether this individual's risk is acceptable, I must consider two factors: (1) the probability that a severe episode will occur in the future, and (2) the expected consequences if it does.

A. Probability of Future Episodes

Turning to the first factor, the mental health professionals who testified before me at the Hearing used different approaches in estimating the probability that the Individual would experience another episode in the future.

The DOE Psychiatrist testified that the Individual's mental illness, which he identified as "Major Depression with Psychotic Features," is currently in remission. Tr. at 9. He further testified that he recommends that the Individual receive "prophylactic therapy" to minimize the likelihood of the Individual experiencing future episodes. Tr. at 7. That prophylactic therapy would include the prescription of anti-depressive and anti-psychotic medications. Tr. at 7. In addition, the DOE Psychiatrist noted that for complete treatment the Individual should be receiving psychotherapy as well. Tr. at 8. The DOE Psychiatrist further testified that, if the Individual was not receiving the appropriate medication therapy, "…It's more likely than not that he would have another *depressive* episode certainly sometime in his life and most likely within the next five years." Tr. at 12 (emphasis supplied). With the appropriate medication therapy, the DOE Psychiatrist testified, the likelihood of a future depressive episode is cut in half. Tr. at 13. The DOE Psychiatrist is concerned that the Individual, in consultation with his then treating psychiatrist, discontinued both the anti-depressant and anti-psychotic medications. Tr. at 16.

According to the DOE Psychiatrist, MDDWPF typically worsens over time. Tr. at 18. The DOE Psychiatrist testified that persons with recurrent depression, like the Individual, are likely to have subsequent episodes that are as bad, or worse than, previous episodes. Tr. at 18. However, psychotherapy may help reduce frequency of occurrence. Tr. at 18. Medication, according to the DOE Psychiatrist, is not particularly effective in reducing the frequency of episodes. Tr. at 18. Even if the Individual were undergoing prophylactic medication therapy, he would still most likely have another episode, according to the DOE Psychiatrist.[3] Tr. at 309. The DOE Psychiatrist testified that there is a high likelihood that the Individual will experience another episode. Tr. at 312, 316.

A psychiatrist (the Evaluating Psychiatrist) who evaluated the Individual at the request of his attorney testified at the Hearing on the Individual's behalf. The Evaluating Psychiatrist testified that he had examined the Individual on two occasions. Tr. at 59. The Evaluating Psychiatrist testified that he agreed with the DOE Psychiatrist's opinion that the Individual was properly

[3] The DOE Psychiatrist provided contradictory testimony on the expected effects of prophylactic medication. As discussed above, the DOE Psychiatrist first testified that prophylactic medication therapy would reduce the Individual's likelihood of experiencing a future episode in half. Subsequently, the DOE Psychiatrist testified that medication therapy is not particularly effective in reducing the frequency of episodes. Although this contradiction in the DOE Psychiatrist's testimony was not resolved, it is not a significant factor in my decision, since the Individual is not currently undergoing prophylactic drug therapy.

diagnosed with MDDWPF. Tr. at 61. The Evaluating Psychiatrist also testified that the Individual is currently in remission. Tr. at 61, 62, 66. While noting that the Individual is susceptible to depression, the Evaluating Psychiatrist testified that a future episode is not inevitable. Tr. at 62. The Evaluating Psychiatrist testified that continued monitoring of the Individual's condition by mental health care professionals is necessary. Tr. at 64. The Evaluating Psychiatrist does not believe any prophylactic medication is necessary at this point. Tr. at 64.

The Evaluating Psychiatrist did not agree with the DOE Psychiatrist's conclusion that the Individual's episodes were recurrent in nature. Tr. at 69-73. The Evaluating Psychiatrist testified that there is not enough evidence in the record to safely conclude that the Individual had a major depressive episode in 1996. Tr. at 69-73. Specifically, the Evaluating Psychiatrist contended that the Individual

> really did not present consistent mood disturbance for at least a couple weeks straight with no alterations. The way [the Individual] described it, it was an alternating mood with rather mild symptoms. And then in terms of the – or with the hallucination, I believe there was hallucination, it also seemed to be quite ephemeral, it might be there for a moment or two and then be gone, and no clear distinct voices.

Tr. at 84. Under questioning by the Hearing Officer, the Evaluating Psychiatrist did acknowledge that if the Individual had experienced a psychotic episode in 1996, then the Individual's illness would be recurrent. Tr. at 85-86. The Examining Psychiatrist further acknowledged that the Individual had experienced auditory hallucinations in 1996. Tr. at 69-70. The Examining Psychiatrist testified that the Individual's likelihood of having a future episode is greatly reduced if his disorder has not been recurrent in the past. Tr. at 74-76. The Evaluating Psychiatrist testified that the risk of a recurrence of the Individual's episodes is also lessened because, according to the Evaluating Psychiatrist, the Individual has no family history of affective disorders. Tr. at 76. The Evaluating Psychiatrist also noted that the Individual had recently undergone some extremely stressful experiences without experiencing a relapse. Tr. at 78. According to the Evaluating Psychiatrist, the ability of the Individual to endure these stressful experiences without experiencing another episode indicates that the Individual is less likely to experience a recurrence of his disorder. Tr. at 78. When the Hearing Officer asked the Evaluating Psychiatrist what he believed to be the likelihood that a future episode would occur, the Evaluating Psychiatrist's response was "I can't say." Tr. at 83-84.

A licensed clinical psychologist (the Psychologist) testified on the Individual's behalf. The Psychologist testified that he had conducted counseling sessions with the Individual on two occasions. Tr. at 132. The Psychologist testified that he agreed with the DOE Psychiatrist's diagnostic conclusions concerning the Individual: that the Individual suffers from a Major Depressive Disorder that is recurrent, has psychotic features and is in remission. Tr. at 132-33, 140. The Psychologist testified that the Individual does not currently have a significant defect in judgment or reliability. Tr. at 133.

The Individual's former treating Psychiatrist (the Treating Psychiatrist) testified on his behalf. She had treated the Individual from July 2003 until February 2004, when the Individual decided to discontinue therapy. Tr. at 185, 187-88. During the period in which the Treating Psychiatrist treated the Individual he was on psychiatric medications. Tr. at 185. The Individual provided the Treating Psychiatrist with a history of his illness and hospitalizations. Tr. at 186. The Treating Psychiatrist testified that she agreed with the DOE Psychiatrist's diagnosis of the Individual. Tr. at 186. The Treating Psychiatrist testified that she had made the same diagnosis after her initial psychiatric examination of the Individual. Tr. at 187. During the Individual's entire course of treatment with the Treating Psychiatrist, he remained in remission and completely free of symptoms. Tr. at 187. The Treating Psychiatrist indicated that she observed no defect in the individual's judgment and reliability during the time she treated him. Tr. at 193. The Treating psychiatrist testified that "there is a probability that this condition will recur." Tr. at 191, 193. She also testified that she cannot predict the future course of the Individual's mental disorder. Tr. at 193-94.

The weight of the evidence in the Record indicates that the Individual's disorder is recurrent in nature. Four mental healthcare professionals testified at the Hearing. Each of these mental health care professionals, agree that the Individual is properly diagnosed with MDDWPF. Three of the four mental healthcare professionals, the DOE Psychiatrist, the Treating Psychiatrist and the Psychologist agree that the Individual's disorder is recurrent in nature. The fourth mental healthcare professional, the Evaluating Psychiatrist, testified that there is not enough evidence in the Record to safely conclude that the Individual's disorder is recurrent in nature. I note, however, that the Evaluating Psychiatrist's conclusion is based upon the assumption that the Individual did not have a depressive episode with psychotic features in 1996. This conclusion is at odds with the information provided by the Individual during the DOE Psychiatrist's examination. During that examination, the Individual informed the DOE Psychiatrist that in 1996, he experienced auditory hallucinations of voices telling him what to wear and informing him that he was Jesus. DOE Exhibit 5 at 7.

Accordingly, the evidence in the Record indicates that it is more likely than not that the Individual will experience a recurrence of his Major Depressive Disorder with Psychotic Features.

B. Expected Consequences of Possible Future Episodes

Three of the mental healthcare professionals who testified at the Hearing agreed that if the Individual were to experience another full blown episode of his disorder, his judgment and reliability would be significantly impaired during that episode. Tr. at 17, 66-67, 133-34. (The

fourth mental healthcare professional, the Treating Psychiatrist, opined that it would depend on the severity of the episode.) Tr. at 194. As the DOE Psychiatrist testified, "when a person has psychotic symptoms, almost by definition, those will cause impairment in judgment or reliability." Tr. at 17. The DOE Psychiatrist further noted that, in the present case, the

Individual has experienced "command hallucinations," which the DOE Psychiatrist explained are hallucinations in which a person hears voices instructing him to take a particular action. Tr. at 17. The DOE Psychiatrist testified that command hallucinations are a particularly serious symptom. Tr. at 17. The DOE Psychiatrist further noted that the Individual's episodes tended to increase in severity, which is typical for this illness. Tr. at 298. Clearly, if the Individual experiences a relapse, his judgment and reliability could be severely impaired.

Three of the mental healthcare professionals testified that if the Individual was carefully monitored by mental healthcare professionals, future episodes could be caught and treated at an early stage, thus decreasing the likelihood that psychotic symptoms would emerge. Tr. at 84, 143, 199.[4] The DOE Psychiatrist correctly notes, however, that the Individual's last psychotic episode took almost a year to respond to treatment. Tr. at 317. Moreover, the Individual is not currently taking any medication that might prevent a future episode from occurring or limit the severity of a future episode. Tr. at 24. I therefore find that there is a substantial risk that if the Individual were to experience a future episode of his Major Depressive Disorder, his psychotic symptoms might recur. A recurrence of psychotic symptoms while the Individual was handling classified information or special nuclear materials would present a significant danger to national security.

IV. CONCLUSION

In essence, my decision is a risk assessment. On the whole, the testimony in this case clearly shows that there is a significant risk that the Individual will experience a future episode of his disorder. Three of the four experts testified that it is more likely than not that the Individual will experience a relapse. Moreover, a substantial possibility exits that if such a relapse were to occur, the Individual would experience a substantial defect in judgment or reliability.

Accordingly, I conclude that the Individual has not presented evidence that warrants granting him an access authorization. Since the Individual has not resolved the DOE's allegations under

Criterion H, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual should not be granted an access authorization. The Individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: December 15, 2006

[4] While these experts are no doubt correct, they could not assure me that this treatment approach would decrease to an acceptable level the probability of the Individual's experiencing a psychotic episode.